

**KENTUCKY PERSONNEL BOARD  
MINUTES OF JULY 13, 2007**

1. The regular monthly meeting of the Kentucky Personnel Board was called to order by Chairman Greg Higgins, on July 13, 2007, at approximately 9:30 a.m., 5 Fountain Place, Frankfort, Kentucky.

Board personnel present:

Greg Higgins, Chairman  
Tina Goodmann, Vice-Chairman  
Lisa T. Hendricks, Member  
Rosemary F. Center, Member  
Jackson M. Andrews, Member  
Robert B. Frazer, Member  
Mark A. Sipek, Executive Director and Secretary  
Boyce A. Crocker, General Counsel  
Linda R. Morris, Administrative Section Supervisor  
Cynthia Perkins, Administrative Specialist

Board personnel absent:

Betty Gibson, Member

2. **READING OF THE MINUTES OF REGULAR MEETING HELD JUNE 25, 2007**

The minutes of the last Board meeting had been circulated among the members previously. Chairman Higgins asked for additions or corrections. Mr. Andrews moved to adopt the minutes as corrected, Ms. Center seconded, and the motion carried 5-0. (Chairman Higgins does not vote unless noted.) The Board members signed the minutes.

3. **EXECUTIVE DIRECTOR'S REPORT**

Mr. Sipek informed the Board Members regarding the following:

a) *Pam Perkins v. Health & Family Services, 2005-CA-2287*

An opinion from the Court of Appeals, which is designated to be published, has affirmed the decision of the Personnel Board that written reprimands are not a penalization. Mr. Sipek advised that he was not sure whether anything further would be filed. He further stated that this decision comes at a good time and coincides with the sunset provision Secretary Crall has proposed, which will offer employees an alternative relief.

b) *Justice and Public Safety Cabinet v. Jo Ann Searcy*, 2006-CA-0424 – Mr. Sipek advised the Board that the issue of whether or not the Personnel Board is an indispensable party to appellate action has been briefed. The Court of Appeals issued an order denying the Personnel Board's petition for rehearing and motion to dismiss the appeal for failure to name the Board as an indispensable party. Counsel for the Appellant, Hon. Bob Bullock, is planning to file a motion for discretionary review; therefore, this case may not be over. If Mr. Bullock files that motion, a response will be filed by the Personnel Board stating that, by law, it is required to be a party to the appeal.

c) Executive Branch Ethics Commission Advisory Opinion 07-11

Mr. Sipek informed the Board that an opinion from the Executive Branch Ethics Commission concerning the personnel hiring process was issued, with a copy provided to the Board members. In a nutshell, it states that ethically a public official should not involve political beliefs in hiring matters. This opinion was adopted unanimously by the Ethics Commission.

d) Mr. Sipek stated that he attended a meeting of the State Personnel Council, and provided a copy of the Preamble to the Board Members. Mr. Sipek explained that the Council meets monthly and that one of their objectives is "to provide the Kentucky Personnel Board with a source of information regarding personnel matters with State Government." He stated that Paul Herberg is the Chairman. Mr. Sipek further stated that he welcomes any information from the Council and would like to extend an invitation to them to attend a Personnel Board meeting.

Chairman Higgins asked if there were any questions from the Board Members. Mr. Andrews stated he had several questions. He wanted to know who and what is the State Personnel Council. Mr. Sipek stated that it is an organization made up of personnel officials from various agencies. They discuss issues and exchange information, which they pass along to state agencies.

Mr. Andrews asked Mr. Sipek to explain the statement on p. 3 of the Advisory Opinion, which he read into the record, "Specifically, when high-level officials (executive or legislative) forward names of individuals, for employment, to agency employees who are responsible for hiring, with the recommendation of placing such individuals in positions somewhere within the agency, established processes may be appear to be circumvented." Mr. Sipek stated that references Advisory Opinion 03-8, with the idea that if someone passes along a name for a job with a recommendation to hire that person, the Ethics Commission wanted to prevent someone putting their personal interest above the public interest. Mr. Sipek further stated that the Ethics Commission has authority to issue advisory opinions on issues by its own motion or at the request of parties. Mr. Andrews expressed his concern that the opinion was too broad.

Mr. Andrews also wanted to know why a brief was not filed in the *Perkins'* appeal. Mr. Sipek stated the workload and the fact that the Board had access to a brief filed by the Cabinet for Health and Family Services and felt that they had done an adequate job expressing the Personnel Board's position.

#### 4. **PERSONNEL CABINET'S REPORT**

Secretary Brian Crall, Personnel Cabinet, advised the Board concerning the following:

a) First, as a former legislator, Secretary Crall wanted to respond to Mr. Andrews' question as it pertained to the Ethics Commission's Advisory Opinion. He added that the Legislative Ethics Commission also issued a similar advisory opinion for legislators. He stated that it was tough to tell someone "no" when a constituent asked to be recommended for a job. The Legislative Ethics Commission advised that it was in the best interest of the legislator not to forward a recommendation. The Personnel Cabinet's policy is not to forward recommendations. However, a "safe harbor" office was set up, run by Ms. Rebecca Billings, to which these calls are forwarded. Ms. Billings' job is to take the politics out of a request. She advises callers on how to get on the state register properly. He further added in response to Mr. Andrews question about non-merit positions, which can be politically appointed, that these requests for employment are handled through the Governor's office and that there is an on-line application.

b) Secretary Crall advised that the Personnel Cabinet is moving forward on the Employee Suggestion System.

c) Secretary Crall stated that he has not received feedback from the Board on the written reprimand regulation. Mr. Sipek stated that he and Mr. Crocker have reviewed it, but are waiting for the *Perkins'* appeal to become final and will then make recommendations to the Board members. Secretary Crall said he would put the process on hold until further notice from the Personnel Board.

d) 2008 Employee Insurance – Secretary Crall stated that renewal rates are running as high as 12 percent and moving towards self-funding. He hopes to keep rates under 12 percent and he is waiting on the June report. He plans to bring it before the August Board meeting and, hopefully, file it with the Legislative Research Commission by August 15.

e) Secretary Crall stated that supervisor training is still being developed and wants to integrate it with what other agencies are doing. He is working with the Kentucky State University staff on the delivery of the training.

f) Secretary Crall informed the Board that the Department of Public Advocacy (DPA) is closing an office in Lexington, which will affect about 20 merit employees. The Personnel Cabinet is working with DPA to transition these employees who want to continue working in state government.

#### 5. **PETITIONED POSITIONS - None**

6. **ORAL ARGUMENTS**

A. John Kramer v. Department of Veterans Affairs

Present were the Hon. Dennis Shepherd, counsel for the Appellee, who had requested oral arguments; and the Hon. Paul Fauri, counsel for the Appellant. The parties answered questions from the Board.

B. Michelle Pitird v. Department of Corrections

Present were the Hon. Lee Rowland, counsel for the Appellee, who had requested oral arguments; and the Hon. Ollie Barber, counsel for the Appellant. The parties answered questions from the Board.

C. Laura Plappert v. Cabinet for Health and Family Services

Present were the Hon. Sheila Redmond, counsel for the Appellee, who had requested oral arguments; and the Hon. Ollie Barber, counsel for the Appellant. The parties answered questions from the Board.

D. Peggy Washington v. Department of Education (2006-464)

Present were Peggy Washington, *pro se*, who had requested oral arguments; and the Hon. Kevin Brown, counsel for the Appellee. The parties answered questions from the Board.

7. **MOTIONS - NONE**

8. **CLOSED SESSION**

Ms. Hendricks moved that the Board go into Executive Session for the purposes of discussing complaints, proposed or pending litigation, and deliberations regarding individual adjudications; Ms. Center seconded. Chairman Higgins stated that the motion had been made and seconded for the Personnel Board to retire into closed Executive Session, passed by a majority vote of the members present, with enough members present to form a quorum. Pursuant to KRS 61.810(1) (c), (f), and (j), the Kentucky Open Meetings Act, the Board will now retire into closed Executive Session. Specific justification under the Kentucky Open Meetings Act for this action are as follows, because there will be discussion of proposed or pending litigation against or on behalf of the Board; and deliberations regarding individual adjudication. The motion carried 5-0. (11:25 a.m.)

Ms. Hendricks moved to return to open session, Ms. Goodmann seconded, and the motion carried 5-0. (2:04 p.m.)

9. **INVESTIGATIONS:**

*Tammy Buckler v. Justice and Public Safety Cabinet* – investigation of allegations of sexual harassment in the Department of Corrections

Mr. Sipek informed the Board members that this began as an appeal (2006-237) in 2006 and is still pending before the Board. In her appeal, Buckler stated that the matter was not properly investigated by the Department of Corrections. At a pre-hearing conference on July 5, 2007, the Department of Corrections offered to handle this matter as an investigation instead of having an evidentiary hearing. Mr. Sipek stated that the potential relief would depend on whether or not she was harassed, retaliated, or discriminated against. The Board could then recommend action based on the findings. Ms. Buckler preferred a hearing, but had no objection. After much discussion among the Board members, Chairman Higgins stated that he did not want to set a precedent that agencies could ask the Personnel Board to investigate in lieu of an evidentiary hearing.

Mr. Frazer made a motion to **deny** the investigation and to continue Ms. Buckler's appeal. Mr. Andrews seconded and the motion carried 5-0.

10. **CASES TO BE DECIDED**

**The Board reviewed the following cases. At that time, the Board considered the Hearing Officers' findings of fact, conclusions of law and recommendations, any exceptions and responses which had been filed, and oral arguments where applicable.**

A. John Kramer v. Department of Veterans Affairs

Ms. Goodmann moved to defer this matter to the next meeting of the Board, Ms. Center seconded and the motion carried 3-2 [with Chairman Higgins voting to break the tie], with Mr. Andrews abstaining and with Ms. Hendricks and Mr. Frazer opposing.

B. Michelle Pitird v. Department of Corrections

Ms. Hendricks moved to note Appellee's Exceptions, Appellant's Response and oral arguments and to accept the recommended order sustaining the appeal to the extent that the dismissal be modified to a 30-day suspension and that the employee be immediately reinstated to the same or similar position. Ms. Center seconded and the motion carried 4-1, with Mr. Frazer opposing.

C. Laura Plappert v. Cabinet for Health and Family Services

Mr. Andrews moved to note Appellee's Exceptions, Appellant's Response and oral arguments and to accept the recommended order sustaining the appeal. Ms. Goodmann seconded and the motion carried 3-2, with Ms. Hendricks and Mr. Frazer opposing.

D. Peggy Washington v. Department of Education (2006-464)

Ms. Goodmann moved to note Appellant's Exceptions and oral arguments and to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 5-0.

E. Jerry Briscoe and Eddie Roberts v. Finance and Administration Cabinet

Ms. Center moved to remand this matter back to the Hearing Officer for the purpose of taking additional evidence and making additional Findings of Fact, Conclusions of Law. Specifically, to obtain the Personnel Cabinet's interpretation of language contained in 101 KAR 2:034, Section 1(2)(c) and its interpretation of the relevant class specification for Property Management Analyst II. Mr. Andrews seconded and the motion carried 5-0.

F. Patricia Dudgeon v. Education Cabinet

Mr. Frazer moved to note Appellee's Exceptions and to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 5-0.

G. Douglas Gregory v. Finance and Administration Cabinet

Ms. Goodmann moved to note Appellant's exceptions, Appellee's response, and oral arguments and to accept the Final Order as altered and attached to these minutes sustaining the appeal to the extent stated therein. Mr. Andrews seconded and the motion carried 3-2, with Ms. Hendricks and Mr. Frazer opposing.

H. Karla Maiden v. Transportation Cabinet

Ms. Hendricks moved to note Appellant's exceptions, Appellee's response, and oral arguments and to accept the Final Order as altered and attached to these minutes sustaining the appeal. Ms. Goodmann seconded and the motion carried 5-0.

I. Candice Smith v. Environmental and Public Protection Cabinet and Personnel Cabinet

Mr. Frazer moved to remand this matter back to the Hearing Officer for the purpose of taking additional evidence and making additional Findings of Fact, Conclusions of Law. Mr. Andrews seconded and the motion carried 5-0.

J. Ray Tucker, Jr. v. Cabinet for Health and Family Services

Ms. Center moved to note Appellant's Exceptions and Appellee's Response and to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 5-0.

K.     Robert Bratcher v. Commerce Cabinet

Mr. Frazer moved to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 5-0.

L.     Michael Brown v. Cabinet for Health and Family Services

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 5-0.

M.     **Moved to August**

N.     Larry Curl v. Cabinet for Health and Family Services

Mr. Andrews moved to accept the recommended order dismissing the appeal. Ms. Center seconded and the motion carried 5-0.

O.     Donna Johnston v. Cabinet for Health and Family Services

Mr. Frazer moved to accept the recommended order dismissing the appeal. Ms. Hendricks seconded and the motion carried 5-0.

P.     Ray McGrannahan v. Cabinet for Health and Family Services

Ms. Center moved to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 5-0.

Q.     Hurston Orcutt v. Justice and Public Safety Cabinet

Mr. Frazer moved to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 5-0.

R.     Henry Stenger, Jr. v. Justice and Public Safety Cabinet

Ms. Hendricks moved to accept the recommended order dismissing the appeal. Mr. Andrews seconded and the motion carried 5-0.

S.     **Moved to August**

### Show Cause Orders – No Response Filed – Appeals Dismissed

The following cases had show cause orders entered by the hearing officer recommending that the appeals be dismissed for failure to timely prosecute unless a statement was filed by the Appellants stating sufficient cause to excuse their failure to appear at the scheduled hearing. There was no response submitted by the Appellants to the show cause orders.

- T. Anita Petty v. Cabinet for Health and Family Services
- U. Bert White v. Personnel Cabinet

Ms. Hendricks moved to find that the Appellants had not responded to the show cause orders and that the recommended orders be accepted dismissing the appeals for failure to timely prosecute the appeals. Ms. Center seconded and the motion carried 5-0.

### 11. **WITHDRAWALS**

Ms. Hendricks moved to consider the following withdrawals of appeals *en bloc* and to accept the withdrawals and dismiss the appeals. Mr. Frazer seconded and the motion carried 5-0.

- A. Kent Baker v. Personnel Cabinet
- B. Marty Clark v. Personnel Cabinet
- C. David Fisher v. Transportation Cabinet
- D. Linda Jackson v. Cabinet for Health and Family Services
- E. Sherie McDonald v. Transportation Cabinet.
- F. Christopher Ward v. Education Cabinet
- G. Jevonne Logan v. Personnel Cabinet
- H. Robert Redmon v. Personnel Cabinet
- I. Kimberly Snowden v. Personnel Cabinet

### 12. **SETTLEMENTS**

- A. James Travis v. Environmental and Public Protection Cabinet  
(Deferred from June)

Ms. Hendricks moved to reject the settlement offer. Ms. Goodmann seconded and the motion carried 5-0.

Mr. Frazer moved to consider the following settlements [B through G] *en bloc* and to accept the settlements as submitted by the parties sustaining the appeals to the extent set forth in the settlements. Ms. Hendricks seconded and the motion carried 5-0.

- B. Carrie Hall v. Cabinet for Health and Family Services



- C. Sharon Helfand-Prewitt v. Cabinet for Health and Family Services
- D. Judy Mathis v. Justice and Public Safety Cabinet
- E. John Harris v. Justice and Public Safety Cabinet
- F. Charles R. "Chuck" Hines v. Transportation Cabinet
- G. Michael Little v. Transportation Cabinet

There being no further business, Ms. Hendricks moved to adjourn, Mr. Andrews seconded, and the motion carried 5-0. (2:24 p.m.)

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Greg Higgins, Chairman

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Tina Goodman, Vice-Chairman

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Betty Gibson, Member

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Lisa Hendricks, Member

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Rosemary F. Center, Member

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Jackson M. Andrews, Member

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Robert B. Frazer, Member